

**Hawg-N-Action, Inc. and International Union of
Operating Engineers, Local No. 9, AFL-CIO,
CLC. Case 27-CA-8053**

24 January 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a charge filed by the Union 21 September 1982, the General Counsel of the National Labor Relations Board issued a complaint 28 October 1982 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 8 December 1982 the General Counsel filed a Motion for Summary Judgment. On 14 December 1982 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response and the averments of the Motion for Summary Judgment and of the attached supporting exhibits¹ stand uncontroverted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to Exhibit 5 submitted by counsel for the General Counsel, on 24 November 1982 the counsel for the General Counsel notified the Company by mail of the consequences of failure to file an answer. No answers were received from the Respondent by 8 December 1982, the date of the Motion for Summary Judgment.

¹ February 4, 1982, counsel for the General Counsel filed a "Supplemental to Motion for Summary Judgment" in which he requests that the Board accept as an additional attachment to the Motion for Summary Judgment a copy of the 1978-81 collective-bargaining agreement between the Respondent and the Union. The Board herein grants that request.

FINDINGS OF FACT

I. JURISDICTION

The Company, a Colorado corporation, is a contractor in the construction industry, engaged primarily in excavation projects, at its facility in Denver, Colorado, where it annually purchases and receives goods and materials valued in excess of \$50,000 directly from points located outside the State of Colorado and annually performs services valued in excess of \$50,000 for other firms which annually, in the course of their operations within Colorado, individually purchase and receive materials and services valued in excess of \$50,000 directly from firms located outside Colorado. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

A. The Unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees of the Respondent who operate, maintain, monitor, assemble, or repair power operated equipment or plants and all employees of the Respondent who assist such employees; but excluding all superintendents, assistant superintendents, supervisory personnel above the rank of general foreman, general foremen, specified foremen, professional engineers, messenger boys, guards, confidential employees, office employees, architects, draftsmen, and inspectors.

At all times material herein, the Union has been and is the exclusive collective-bargaining representative of these employees by virtue of Section 9(a) of the Act and its collective-bargaining agreements with the Respondent, the most recent of which is effective from 1 May 1981 to 30 April 1984.

**B. The Request to Bargain and the Respondent's
Refusal**

On or about 25 August 1982 the Union requested, by letter,² that the Respondent furnish it with information regarding, in general, the business relationship between the Respondent and J. L. Excavating, Inc. The Union stated that it had learned that the Respondent's president, John Lint, and perhaps other principals of the Respondent had es-

² Attached hereto as "Appendix B."

established an "alter ego" company which would thus be a "party" to the then current collective-bargaining agreement between the Respondent and the Union. The Union further stated that the requested information was "necessary and relevant" to its duty to administer the collective-bargaining agreement.

It has long been held that an employer has an obligation, as part of its duty to bargain in good faith, to provide information needed by a bargaining representative for the proper performance of its duties.³ Where the information sought concerning the relationship of an employer party to a bargaining agreement with another employer not in compliance with that agreement has a reasonable relevance to the union's duty to administer and enforce the agreement, the Board has held that the employer party to the agreement must supply the information requested.⁴ In this case, information obtained by the Union from other sources, the accuracy of which is not disputed by the Respondent, tends to indicate that the Respondent and J. L. Excavating, Inc. are alter egos and justifies the Union's seeking relevant information to decide whether its agreement with the Respondent had been violated. Finally, the questions addressed to the Respondent by the Union are within the ambit of inquiries found by the Board to be reasonably relevant to the administration and enforcement of a collective-bargaining agreement. See cases cited at footnote 4, *supra*.

On the basis of the foregoing findings, we conclude that the information requested by the Union is relevant and essential to the performance of its obligation as the bargaining representative of the employees of the Respondent. It is further found that the Respondent, by failing and refusing to provide the information requested by the Union, violated and is violating Section 8(a)(5) and (1) of the Act.⁵

CONCLUSIONS OF LAW

1. By failing and refusing to provide the Union with the information it requested in its letter to the Respondent dated 25 August 1982 the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

As we have found that the Respondent refused to give to the Union relevant information which it

requested for the purposes of administering and enforcing the collective-bargaining agreement, we shall order that the Respondent furnish the Union with the information it requested concerning the Respondent's relationship with another company.

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Hawg-N-Action, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Union of Operating Engineers, Local No. 9, AFL-CIO, CLC, by refusing to furnish it with the information requested in its letter to the Respondent dated 25 August 1982.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, bargain collectively with International Union of Operating Engineers, Local No. 9, AFL-CIO, CLC, by furnishing the said labor organization with the information it requested by its letter dated 25 August 1982.

(b) Post at its facility in Denver, Colorado, copies of the attached notice marked "Appendix A."⁶ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

⁴ *Doubarn Sheet Metal*, 243 NLRB 821 (1979); *Hebert & Co., et al.*, 259 NLRB 881 (1981); *Associated General Contractors of California*, 242 NLRB 891 (1979).

⁵ In light of the complaint's allegations, in combination with the Respondent's complete failure to respond to those allegations, Chairman Dotson and Member Hunter agrees with their colleague that a violation has been established in the particular circumstances of this case.

⁶ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by the notice.

WE WILL NOT refuse to bargain collectively with International Union of Operating Engineers, Local No. 9, AFL-CIO, CLC, by failing and refusing to furnish the said labor organization with the information requested in the Union's letter to us dated 25 August 1982.

WE WILL, upon request, furnish International Union of Operating Engineers, Local No. 9, AFL-CIO, CLC, with the information requested in the Union's letter to us dated 25 August 1982.

HAWG-N-ACTION, INC.

APPENDIX B

I am writing to you on behalf of the International Union of Operating Engineers, Local Union No. 9. It has come to my attention that Hawg-N-Action is, or may be, in violation of the collective bargaining agreement with Local 9 by reason of the establishment by yourself and, perhaps other principals of Hawg-N-Action, Inc., of an alter-ego company under the terms of the National Labor Relations Act, which company is, I believe, known as J. L. Excavating, Inc. Specifically, we believe that the relationship between Hawg-N-Action, Inc., and J. L. Excavating, Inc. is or may be such that J. L. Excavating, Inc. is party to the existing contract between Hawg-N-Action, Inc. (which contract has never been disavowed through the course of the bankruptcy proceedings) and Local 9.

The following information is necessary and relevant to the Union's administration of the contract, and is sought in furtherance of its duty of fair representation to all persons represented by it under the terms of the current collective bargaining agreement. We would appreciate your preparing answers to the following questions. Unless we have received the information sought within ten days of your receipt of this letter, we will take appropriate action with the National Labor Relations Board.

1. Please identify each officer, shareholder, director, or other management representative of Hawg-N-Action, Inc. since October 6, 1981 by name, title or titles, and dates during which they filled or have filled the position identified. As to each such person, state whether they hold or have held at any time since October 6, 1981, any position in J. L. Excavating, Inc. If so, identify the nature of the position(s) they hold or held; the date upon which such persons commenced to hold the position(s) named; and, if appropriate, the date you which they ceased to hold said position(s) in J. L. Excavating, Inc.

2. State the name of each person who currently has, or has had at any time since October 6, 1981 a function related to labor relations for Hawg-N-Action, Inc. As to each such person, identify the person's title and the exact nature of their function. If any person has performed such a function since October 6, 1981 and no longer does, or any person has begun to perform such a function since October 6, 1981 state the first and last dates upon which that person performed that function.

3. State the name of each person who has or has had since October 6, 1981 a function related to labor relations for J. L. Excavating, Inc. As to each such person, identify the person's title and the exact nature of their function. If any person has performed such a function since October 6, 1981 and no longer does, or any person has begun to perform such a function since October 6, 1981 state the first and last dates upon which that person performed that function.

4. Identify all customers of J. L. Excavating, Inc.'s since its commencement of business and identify those who are now or were formerly customers of Hawg-N-Action, Inc.

5. State the nature of business engaged in by Hawg-N-Action, Inc.

6. State the nature of business engaged in by J. L. Excavating, Inc.

7. Identify all persons who currently perform or have performed since October 6, 1981 clerical, administrative, bookkeeping, managerial, engineering, estimating, or other services for Hawg-N-Action, Inc. As to each such person, identify the exact nature of the services performed. If the person now performing any or all of these functions has changed since October 6, 1981, identify the dates during which each function was performed by each person.

8. Identify all persons who now perform or have performed since October 6, 1981 clerical, administrative, bookkeeping, managerial, engineering, estimating, or other services for J. L. Excavating, Inc. As to each such person, identify the exact nature of the services performed. If the person now performing any of all or these functions has changed since October 6, 1981, identify the dates during which each function was performed by each person.

9. Identify all persons who now perform or have performed supervisory functions for Hawg-N-Action, Inc. since October 6, May 1, 1981 and state the nature of the functions performed by each such person. If such personnel has changed at any time since October 6, 1981, identify the dates during which each person performed supervisory functions.

10. Identify all persons who now perform or have performed supervisory functions for J. L. Excavating, Inc. since October 6, 1981 and state the nature of the functions performed by each such person. If such personnel has changed at any time since October 6, 1981, identify the dates during which each person performed supervisory functions.

11. Are Hawg-N-Action, Inc. and J. L. Excavating, Inc. joint beneficiaries of, or otherwise covered by, any insurance policy or surety bond?

12. Describe the skills possessed by employees of Hawg-N-Action, Inc. performing what you consider to be employment covered by your collective bargaining agreement with Local 9.

13. Describe the skills possessed by all classifications of employees of J. L. Excavating, Inc.

14. Identify all former employees of Hawg-N-Action, Inc. that are now or have been at any time since October 6, 1981 employed by J. L. Excavating, Inc. As to each such person, list his or her job title; the date upon which such person was hired by J. L. Excavating, Inc.; their job title at date of hire; the person by whom they were hired; and, if appropriate, the date and circumstances under which such person severed his or her employment with J. L. Excavating, Inc., including, if the person was terminated, the name and job title of the person by whom terminated.

15. Are or was J. L. Excavating, Inc. and J. L. Excavating, Inc. Subchapter S corporations for federal tax purposes? If so state the names of the persons recognizing income.

16. Identify precisely (name and serial number) the equipment belonging to Hawg-N-Action, Inc. which was used by J. L. Excavating, Inc. on the project on Havana and Parker Roads for Great West Construction.

17. Identify any other equipment belonging to Hawg-N-Action, Inc. which has been used at any time by J. L. Excavating, Inc., stating the name and serial number of the equipment; the contractor for whom the work was performed; the location and nature of the work done; and the dates during which the equipment was used. State whether any payments have been made by J. L. Excavating, Inc. to Hawg-N-Action, Inc. for the use of such equipment, and if so, how much the payment was and when the payment was made.

18. State whether any assets or money (other than as identified above) has been loaned between Hawg-N-Action, Inc. and J. L. Excavating, Inc. If loans have taken place, describe the amount of money or the asset loaned and the terms and conditions of such loan. State whether those terms and conditions are in writing.

19. Have any employees of J. L. Excavating, Inc. performed any work in the field since October 6, 1981 on jobs for which Hawg-N-Action, Inc. was the excavating subcontractor, and if so, identify the employee(s) in question; the job site(s) upon which they performed work; the dates during which such work was performed; and the identity of the person or persons supervising them in the field.

20. State whether J. L. Excavating, Inc. has used any vehicle, machinery or equipment *not* belonging to Hawg-N-Action, Inc. If so, state from whom that vehicle, machinery or equipment was leased or purchased; terms of the lease or purchased agreement and, if appropriate, identify the borrower and guarantor of any loan taken by J. L. Excavating, Inc. to finance the lease or purchase.

21. Identify any machinery, vehicle or equipment doing work for J. L. Excavating, Inc. which carries or at any time carried the Hawg-N-Action, Inc. logo or other identification.

22. State whether any money from John Lint's personal account at the United Bank of Denver (that account into which certain checks written to Hawg-N-Action, Inc. since May, 1982, were deposited) has been invested in and/or spent on behalf of J. L. Excavating, Inc. by John Lint. (Do not attempt to trace particular funds.)

23. For each individual named in answer to any question in this letter, state that person's family or blood relationship to John Lint.